

DANIEL E. LUNGREN  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



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July 30, 1997

Allan Abshez  
Irell & Manella  
1800 Avenue of the Stars, Suite 900  
Los Angeles, California 90067-4276

VIA FACSIMILE AND U.S. MAIL

RE: Mancuso v. Calif. State Coastal Conservancy, et al.  
Los Angeles County Superior Court Case No. BS 040197

Dear Mr. Abshez:

I read with some astonishment your letter of July 29, 1997. ✓  
That letter essentially implies that the Conservancy is somehow at fault for not having an immediate and definitive response to a last minute counter proposal to the draft settlement agreement which I made available to you a full 10 days prior to the Conservancy's meeting. As you may recall, I did not even have the courtesy of a response to that settlement proposal until the evening before the Conservancy's meeting and that response occurred only because I called your office.

When I presented the Conservancy staff's recommended settlement to you, I indicated that the Conservancy was meeting on July 24, 1997 and that this was the last regularly scheduled meeting prior to the due date for your brief. As a result, I warned that it was necessary to move quickly to provide enough time for negotiations leading to an agreement the staff and I could recommend to the Conservancy.

It was you who chose not to respond. Indeed, when we had our discussion the evening before the Conservancy meeting, you demonstrated that you were not even familiar with the terms of the settlement proposal and the changes which had been made between that draft and the prior draft in an attempt to accommodate your client's interests.

Notwithstanding my disappointment at the tone and posture of your letter, after consulting with the Conservancy staff, I have the following response to your letter.

As I indicated to you in our telephone conversation of July 28, 1997, the Conservancy does not believe that a termination



date of December 31, 1998 will realistically provide sufficient time within which to meet the conditions necessary to permit the lawful reconveyance of the easement. My belief is that the Conservancy will not accept a date earlier than December 31, 2003. Second, the Conservancy, would like assurance that the amount proposed to be donated for the purpose of establishing the endowment for the alternative access program have the same purchasing power when it is paid to the account as it does today. Thus, the settlement agreement will need some provision in that regard. Finally, while a decision on what the alternative access program will be could be made at the staff level by January 1998, depending on what that access program turned out to be, an additional 6 months might be necessary before the Conservancy could commit itself to that program because of CEQA requirements. Thus, the date for Conservancy action on the alternative access program will need to be extended to June 30, 1998 with corresponding changes to the dates for Coastal Commission and General Services related actions.

If you and your client are prepared to negotiate these points, I am willing to make myself available until I leave on vacation on August 5, 1997. If we have a final draft by that date, the Conservancy's counsel, Marcia Grimm, has indicated that the Conservancy could call a special meeting to consider that proposal prior to September 2, 1997 and that she would make the presentation to the Conservancy. If we cannot come to agreement on the terms of a final draft by August 5, 1997, then you will have to decide whether to seek a continuance of the trial and briefing schedule in order to leave time for renewed negotiations upon my return, or to forgo settlement and proceed to litigate what is left of your petition for writ of mandate.

As you may recall, these negotiations were put on hold while you were in vacation in Hawaii. I did not insist that they be continued by another attorney in your office while you were gone. Even though the partner in your office who typically handles Mr. Mancuso's interests might have handled the negotiations, it obviously would not have been appropriate to require your client to utilize counsel lacking a full appreciation of all the complexities of this case. Similarly, it is inappropriate for you to suggest that Conservancy staff counsel fill in for me in negotiations when they lack the depth of knowledge I do about the issues in this case.

As a result, if you are willing to negotiate the points mentioned above but believe more time will be required than is available before my vacation, I suggest that you seek a continuance from Judge O'Brien. I will be willing to support that request.

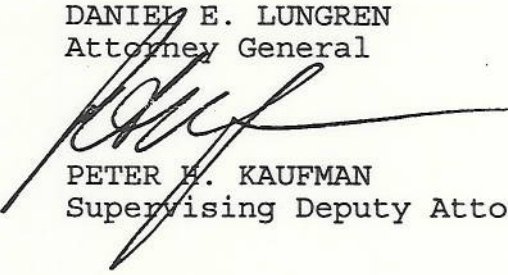
Allan Abshez  
July 30, 1997  
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If I have not heard from you prior to my departure, I will assume that settlement discussions have terminated and that we will proceed to litigate the above entitled matter.

This letter is a confidential offer of compromise inadmissible as evidence in any proceeding pursuant to Evidence Code section 1152.

Sincerely,

DANIEL E. LUNGREN  
Attorney General



PETER H. KAUFMAN  
Supervising Deputy Attorney General

PHK:pgm

cc: Marcia Grimm  
Jonathan Horne



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WRITER'S DIRECT DIAL NUMBER

July 29, 1997

VIA FAX & U.S. MAIL

Peter H. Kaufman, Esq.  
Supervising Deputy Attorney General  
State of California  
Department of Justice  
110 West A Street  
Suite 1100  
Post Office Box 85266  
San Diego, California 92101

Via Fax (619) 645-2012

Re: Mancuso v. California State Coastal Conservancy  
Los Angeles Superior Court Case No. BS 040197

Dear Mr. Kaufman:

Yesterday, when we spoke you informed me that your client had been unable to reach consensus regarding our July 23rd proposal at its meeting last week, but that it is still very interested in settlement and would like to engage in further discussions. You also indicated that while you were authorized to discuss outstanding issues with me, you had not been delegated any settlement authority by your client. You asked that I advise you of our response once I had consulted with my client.

Frankly, we are disappointed at the lack of a clear response from the Conservancy, particularly given the many, many months which have been devoted to negotiations to date. This situation is all the more frustrating, since we have been consistent in our settlement approach, and had thought that the July 23rd proposal was a fair and reasonable one, which reflected many points of mutual agreement.

Given this troubling state of affairs, I have been instructed to bring closure to our settlement negotiations by September 2, 1997, when our opening brief in the above referenced action is due. Accordingly, I have been authorized

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Peter H. Kaufman, Esq.

July 29, 1997

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to meet with Conservancy officials to make a good faith effort to reach agreement during the time which remains. I must stress that if the Conservancy wishes to pursue such discussions, it is essential that an official with appropriate negotiating authority be designated. ✓

I am aware that you will vacationing during some of the period concerned, but hopefully the Conservancy's staff counsel, which is familiar with this matter, can cover any meetings that take place. Please let me know if any such meetings can be arranged. If I do not hear from your office or the Conservancy directly, we will assume that the Conservancy has rejected our offer and that settlement negotiations should be considered closed. This letter is a confidential offer of compromise inadmissible pursuant to Evidence Code Section 1152. ✓

Very truly yours,

  
Allan J. Abshez

cc: Mr. Frank Mancuso  
James Pierce, Esq.



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## Multiple Facsimile Cover Sheet

Date: July 29, 1997

From: Allan J. Abshez

No. of Pages: 3  
(including cover page)

To the Following:

Name  
Mr. Frank Mancuso  
James Pierce, Esq.Company NameFacsimile No.  
310/449-3020  
510/286-0470

MESSAGE:

VIA FACSIMILE  
Sent by: *Mancuso*Reference No.: *29-141-142*

Received by: \_\_\_\_\_

Time: \_\_\_\_\_

Original will be sent via: Mail \_\_\_\_\_ Pouch \_\_\_\_\_ Messenger \_\_\_\_\_ Overnight Courier \_\_\_\_\_ Will not be sent X

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WRITER'S DIRECT DIAL NUMBER

July 23, 1997

Board of Directors  
California State Coastal Conservancy  
c/o Peter H. Kaufman  
Supervising Deputy Attorney General  
State of California  
Department of Justice  
110 West A Street  
Suite 1100  
Post Office Box 85266  
San Diego, California 92101

Via Fax (619) 645-2012

Re: Mancuso v. California State Coastal Conservancy  
Los Angeles Superior Court Case No. BS 040197

Dear Boardmembers:

The parties have worked long and hard to negotiate an equitable and feasible settlement structure which if implemented will improve coastal access in the Malibu area. This process has produced agreement on the following critical terms requested by the Conservancy:

1. The owners have agreed in principle to contribute \$978,000, which is the amount that Conservancy staff determined was necessary (in combination with other funds which are or will be available) to fund coastal access programs the Conservancy wishes to pursue;

2. While our negotiations have always been premised on the well-acknowledged physical and practical deficiencies of the easements, the Conservancy will not be required to go forward unless it independently determines that the benefits of public use of the easement are outweighed by the cost of constructing and maintaining necessary improvements and mitigating potential impacts as required by state law;

3. The owners will provide mutually agreeable security for the performance of their obligations in accordance with our discussion Wednesday with Peter Kaufman, and will cooperate in the implementation of the settlement agreement; and



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4. The Coastal Commission and the State of California Department of General Services must concur in the reconveyance before it occurs.

Apparently, only one substantive issue remains. Our position is that the Conservancy must close no later than December 31, 1998 or the settlement agreement would be deemed automatically terminated (without the fault of any party). The December 31, 1998 time frame provides about a year-and-a-half for the Conservancy to determine, in consultation with the Coastal Commission, the many beneficial uses for the funds to be received. How, when and where, the Conservancy chooses to use the funds is a matter for the agencies to determine; the owners should have no role or responsibility in such matters.

Given the many, many years of study, negotiations and discussions that have already occurred, the additional year-and-a-half period is more than a reasonable time frame for accomplishing this task. By contrast, the owners cannot commit to an open-ended agreement where they would have obligations other than to fund the agreed-upon amount (and cooperate in processing), or where the reconveyance would be delayed until the Conservancy actually completes the use of the funds received.

We hope you will agree that our offer is reasonable, and that the settlement contemplated will be a productive and important step towards improving coastal access in the Malibu area. We respectfully request that you authorize your counsel and acting-Executive Director to finalize and execute a settlement agreement consistent with the foregoing principles. This letter is a confidential offer of compromise inadmissible pursuant to Evidence Code Section 1152.

Very truly yours,



Allan J. Abshez

cc: Jonathan Horne, Esq.